

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

v.

EDGAR A. LOCKETT, JR.

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2:13-CR-0012(01)

REPORT AND RECOMMENDATION
TO DENY DEFENDANT'S MOTION TO SUPPRESS

Came for consideration the motion to suppress filed May 17, 2013, by defendant EDGAR A. LOCKETT, JR. On June 20, 2013, the undersigned conducted a pre-trial hearing on defendant's motion. At the hearing, counsel for defendant clarified that by his motion, he is seeking to prevent the Government from introducing evidence that defendant did not file a Form 1040 U.S. Individual Income Tax Return with the Internal Revenue Service (IRS) for each of the years the Indictment alleges he committed the offense of Income Tax Evasion. Defendant's argument appears to be not only that any Form 1040 is not admissible because it does not reflect a valid control number assigned by the Director of the Office of Management and Budget, but also that the absence of such a number prevents the Government from presenting evidence that any Form 1040 income tax return was not filed or should have been filed.

As noted by the Court at the hearing, defendant's pleading does not appear to be a motion to suppress but, rather, an objection to evidence the defense anticipates the Government will offer in its case in chief and, as such, is an evidentiary matter for the trial judge. Consequently, to the extent the motion is, in fact, an objection to be urged at trial, the undersigned enters no

ruling and defendant may present his challenge to the evidence at trial.

To the extent defendant's pleading is, in fact, a motion to suppress, the undersigned finds that the motion should be denied based upon the case law cited by the Government holding that the failure of the IRS to place a valid control number on Form 1040 is not a defense to prosecution for income tax evasion, a violation of 26 U.S.C. § 7201.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the motion to suppress filed by defendant EDGAR A. LOCKETT, JR. be DENIED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 21st day of June 2013.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to this Report and Recommendation. *See* 28 U.S.C. § 636. This case is set for docket call on Monday, July 8, 2013, and trial on Tuesday, July 9, 2013. All objections must be filed **on or before Friday, June 28, 2013**.

Any such objections shall be made in a written pleading entitled "Objections to the

Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1), as recognized in *ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).